



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

Peter B.H. Birks

Citation for published version:

Cairns, JW, *Peter B.H. Birks: A Recent Assessment*, 2011, Web publication/site, Edinburgh Legal History Blog. <<http://www.elhblog.law.ed.ac.uk/2011/12/05/peter-b-h-birks-a-recent-assessment/>>

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Publisher's PDF, also known as Version of record

Publisher Rights Statement:

© Cairns, J. (Author). (2011). Peter B.H. Birks: A Recent Assessment. Edinburgh Legal History Blog.

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



Peter B.H. Birks: A Recent Assessment

Posted on [05/12/2011](#) by [John Cairns](#)

The recent death of Lord Rodger has caused your blogger to reflect quite a lot on the late Peter Birks, since he and Alan Rodger had been so close and both died so much before their time. It was therefore fascinating, while browsing in the Edinburgh Law Library's current periodicals section, to come across in the *Restitution Law Review* (2011) the paper by Professor Gerard McMeel of Bristol reflecting on the intellectual legacy of Peter Birks and considering what type of scholar he had been.

I was initially surprised to see this; it sometimes feels very much as if Peter is still with us. But it is seven years since his death and he now even has an entry in the ODNB by Willam Swadling (which I did not realise until reading Professor McMeel's article). Perhaps our consciousness of his continuing presence is just a reflection of the power of his charisma and personality and the continuing relevance of his work. Professor McMeel has certainly made a good case for the assessment of Peter's intellectual legacy, if only because it is already being fought over. As McMeel rightly says, Peter "was the dominant private lawyer of recent time".

Classification or taxonomy was an abiding interest of Peter's; so one can imagine his amusement as his successors try to classify him. He would also have applied his formidable intellect to correcting them where he thought them wrong. Though a kind man, he could be quite impatient with wilful stupidity or intellectual idleness. According to McMeel, by both friend and foe, he has been variously labelled as a taxonomist, a positivist, a formalist, a correctivist, an interpretivist, and a pragmatist. No doubt, like us all, he was not always consistent in his approach. But what is fascinating is that so many writers are in a way creating their own Birks and arguing over the intellectual legacy: whether one they wish to agree with or one they wish to reject.

Peter's death is still recent; the loss is still raw and felt. Grief may still seek ownership and possession of the memory.

I first got to know Peter well when I returned to Edinburgh from teaching at the Queen's University, Belfast. He then held Edinburgh's chair of Civil Law. Of my senior colleagues at Edinburgh, he was the only one who offered me anything significant in the way of mentoring of the type I had already experienced at Queen's from, among others, my excellent Head of Department there, Colin Campbell. Though I was formally in the Department of Scots Law, much of my teaching was in Civil Law. Together with the talented Departmental Secretary, Mrs Lisa White, Peter generated an air of excitement in the Department. One felt that important things were happening, and that good things would be the result. He was enthusiastic; he made one feel the importance of academic life. This meant that Peter was not an easy-going man. He was quite impatient with some of his fellow Professors in the Faculty, whom he saw – rightly or wrongly – as obstructive to progress and development. He was an enthusiastic if not always popular teacher. He really wanted to communicate his ideas. The duller brethren found him difficult; the brighter responded to his keenness, charisma, and indeed handsome looks to be stimulated and excited by ideas and scholarship.

Swadling writes that Peter was "still based in Oxford" during his time in Edinburgh; from the Edinburgh point of view one would not have known. He seemed omnipresent. He created the Edinburgh Roman Law group, still going strong; he created the Edinburgh Legal History Discussion Group, of which one can say the same. Many articles started off in the latter as a brief presentation before friends over a glass of wine. It is obvious, though,

that he had a punishing regime of night buses and later an old banger of a car to travel to Oxford for most weekends. In many ways it must have been a tough life for Peter and Jackie, particularly after the birth of their son who was christened in Edinburgh. But one was not aware of this. In Edinburgh Peter had made himself comfortable. He had a delightful small flat overlooking Greyfriars Kirkyard in an old converted building. Peter loved Roman law. He became famous for his work on English restitution, and indeed when I came back to Edinburgh, he will have been completing the first edition of his masterful work on the topic. It is his work on restitution that McMeel discusses as disputed. But the Birks I knew was the Birks excited by the discovery of the Lex Irnitana and the implications this held for our understanding of the role of the judges and of Roman procedure; the Birks keen on the Lex Aquilia and teasing out the nature and interpretation of texts on damage caused by smoke from a cheese manufactory; the Birks who took students through Cicero's speeches so they could get a grasp of the immediacy and reality of Roman law; the Birks who understood that Gaius was still an excellent introductory work for novice lawyers; the Birks who wrote for our students a wonderful unpublished essay to help them understand the nature of an obligation.

Of course, some of this links up with his work on English restitution: our students got a lot on Gaius' and Justinian's schemes of classification. The problems posed by Gaius' division of obligations and the nature of the *condictio indebiti* were expounded to them. We still give our students the clever selection of texts that Peter and Grant McLeod developed for teaching first-year Roman law: texts the juxtaposition of which encourages students to investigate and think for themselves through the problems of law and history they pose. Peter was interested in what some might think of as by-ways in legal history. Thus I recall a paper at the Legal History Discussion group on Giles Jacob, "blunderbuss of law"; another on William Fulbecke, which led to a reprint of Fulbecke with an introduction by Peter. These minor figures were seen by Peter as encapsulating something significant about learning and classification: they emphasised that law was a rational system, just as much as did Gaius, Justinian, and Blackstone. That they were not great figures in a constructed canon was central to their significance. Peter's understanding of legal history was undoubtedly influenced by Toby Milsom, who is indeed the most important historiographer of the early medieval common law since Maitland.

Peter was a sociable man. I recall many pleasant dinners in Edinburgh restaurants or after the Roman Law Group. (I also recall a dinner in my then flat in Stockbridge where there was an explosive argument with a colleague!) As I then lived on my own, I often worked late in the evening in Old College, as was often Peter's practice. If he noticed I was there, and had finished for the night, he would call me down to his office, where we would share a bottle of (usually) red wine with conversation ranging from mere gossip to university politics to scholarly matters.

This brings me back to Professor McMeel's paper. His main focus – and that of those whom he discusses – is on Peter's work in restitution. He sees the key to understanding Peter's oeuvre in that field as lying in his background in Roman law and Milsomian approach to legal history. This seems right. It certainly chimes with my own knowledge of Peter's interests. I knew Peter best in the period of transition from his early to his middle phase, to adopt McMeel's divisions of Peter's work; but this as when he was laying down the foundations. Peter is undoubtedly much missed. As was natural, I saw him increasingly less as the years passed; but we never became totally out of touch, though our academic interests increasingly diverged. I can still feel the shock when he told me of his illness. Swadling states that Peter had a strong sense of duty; this was true. He was indeed a good and faithful servant.

This entry was posted in [In memoriam](#). Bookmark the [permalink](#).